



TOWN OF TEWKSBURY ZONING BOARD OF APPEALS

999 Whipple Road
Tewksbury, MA 01876

Robert Dugan, Chairman
Len Dunn, Vice Chair
Gerald Kutcher
Associate Members:
Jaime Doherty
Dianne Bartalamia

DEPARTMENT OF COMMUNITY DEVELOPMENT

MEETING MINUTES January 29, 2015

The meeting was called to order at 6:30 p.m. by Robert Dugan, Chairman, at the Pike House (temporary town hall). Present at the meeting were Len Dunn, Jaime Doherty, and Dianne Bartalamia. Also in attendance was Melissa Johnson, Recording Secretary.

Gerald Kutcher was not in attendance.

Approval of Meeting Minutes – December 18, 2014

MOTION: Mr. Dunn made the motion to approve the December 18, 2014 meeting minutes; seconded by Ms. Bartalamia and the motion carried 4-0.

CONTINUED HEARING

FTO Realty Trust for Lorraine Bradley (co-owner Irene Fiore & Marie Romano, c/o Paula Barry) for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw. The applicant proposes to construct a new single family residence as shown on plans filed with this Board. Said property is located at **20 Riverview Avenue**, Assessor's Map 98, Lot 21, zoned Residential.

Present for the applicant was Dick Cuoco. Mr. Cuoco provided the Board members with a copy of a plan of the site along with correspondence from the Tewksbury Conservation Agent, Kyle Boyd. Mr. Cuoco noted that Mr. Boyd has stated that the Conservation Commission's preference is a "site design that situates the house and associated site work as far away from the river as possible". Mr. Cuoco explained that the alternative plan was done to show that the lot is buildable without the variance. The Conservation Commission has not approved any plans and prefers the plan titled "Site Plan" dated January 2, 2015. This site plan is also the preferred option for the applicant.

Mr. Cuoco explained that they looked at the site again and took into consideration some of the comments made by the abutters regarding the driveway, safety concerns, etc. As a result, they are suggesting to prune the trees up so that they would not be in danger of not surviving as they are mature; this would also allow for more visibility. Mr. Cuoco referenced the original application submitted by Jim Hanley of Civil Design Consultants, and noted that Mr. Hanley

states that “the special conditions affecting this particular property do not affect the zoning district in general and therefore granting a variance would not be detrimental to the public good as the affects of having the flood plain compensation done in Plan SK-1 would bring the flood waters closer to Bridge Street and the abutting properties”. Mr. Cuoco explained that another alternative would be to put the dwelling on piers and rehabilitate it in its existing location. Mr. Cuoco noted that SK-1 and rebuilding the dwelling in the existing location are not the preference of the Commission or the applicant. The Conservation Commission has not closed their file as they are awaiting a determination from the Board of Appeals.

Mr. Dugan asked if the plan has been revised as the Commission references a plan revised January 2, 2015. Mr. Cuoco confirmed this and explained that the only difference between the plans are for Conservation purposes as they requested a planting list, reinforced slope details, and hay bale and filter fabric detail be added; otherwise the plans are identical.

Ms. Bartalamia noted that she did visit the site and the current home is in the river. The Conservation Commission is stating that their preference is for the home to be as far away from the river as possible. Mr. Cuoco explained that there is a 200 foot riverfront area that limits activity that can be done and this area must be maintained. The Conservation Commission has requested specific grassing and plantings in this area to ensure there are no invasive species. Mr. Cuoco noted that plan C1 keeps the entire home out of the 200 foot riverfront area with the exception of a small portion. Mr. Cuoco explained that the plan is to construct a home in another location on the lot if the relief is not granted.

Ms. Bartalamia inquired about The Costa’s concerns that the front of their home will face the rear of this home and asked if plantings will be done to serve as a buffer. Mr. Cuoco explained that there is an existing small vegetated area and the applicant would likely not have a problem planting some evergreen trees to act as an additional buffer.

Mr. Dunn asked why SK-1 is not the preferred plan of the applicant and Mr. Cuoco explained that the Conservation Commission prefers to keep the home as far away from the river as possible. Mr. Cuoco noted that plan SK-1 can be done, but it not as environmentally beneficial as plan C-1. Mr. Cuoco noted that the difference in the design of the homes on the two plans is there is a deck in C-1 and no deck in SK-1.

Mr. Dugan noted that the Board did a site walk and explained that by right a home can be constructed on the lot. The Conservation Commission prefers plan C-1 based on the location, but it is the Boards job to determine the variance for the distance to Riverview Ave. Mr. Dugan noted that he would prefer to see the home pushed further back away from Riverview Avenue.

Mr. Dugan opened the hearing to the public explained that it the Zoning Board’s job to make a determination on the variance being requested and not whether the home can be constructed or wetland related matters.

John and Charlene Costa of 95 Bridge Street came forward. Mr. Costa noted that this is his fourth hearing he has attended on this matter and would like to reiterate that he was told this is not a buildable parcel when he purchased his home. Mr. Dugan explained that it has been determined that this is a buildable lot and requested Mr. Costa provide his input as to where they would prefer to see the new structure, the vegetation, etc. Mr. Dugan explained they can rebuild the existing structure. Mr. Costa expressed concerns with a cottage that was used two times a

year being replaced with a permanent structure. Mrs. Costa noted that in plan C-1 she could “reach out her window to say good night to the neighbor”. Mr. Costa asked if the bylaw is 25 feet from the road and Mr. Dugan explained the front yard setback is 25 feet and the side setbacks are 15 feet. The applicant is requesting to be 6.5 feet away from Riverview to maintain the 15 feet from the Costa’s property. Mr. Costa asked if there is any concern about disrupting the water table with new construction and Mr. Dugan explained that the Conservation Commission would address that matter. Mr. Dugan asked how far the Costa’s home is from the lot line and Mr. Cuoco noted that he believes their home is 8 feet from the property line. Mr. Dugan noted that the new structure would be 15.5 feet from the lot line. Mrs. Costa expressed concerns with the property being too close to her home and the noise associated with this and noted that this is not typical for Tewksbury. Mr. Dugan explained that the side setback in Tewksbury is 15 feet. Mr. Dugan asked if the Costa’s would prefer plan SK-1 and Ms. Costa stated that they “do not want a home this close to their home”. Mrs. Costa expressed concerns with the location of the driveway and snow removal and noted that currently the town plows the snow to the end of Riverview Avenue and asked what will happen with the snow as she feels it will go into the river area and flood. Mr. Cuoco explained that they chose this location for the driveway because of car headlight lights.

Bill Connors of 110 Bridge Street came forward and explained that he feels C-1 is a bad option for the entire neighborhood and would have a negative impact on all. Mr. Connors requested the Board reject option C-1 and go with option SK-1 as he feels this is a good compromise from all parties and does not require any variances.

Jim Bruce of 2 Riverview Avenue came forward and noted that he sought the advice of someone regarding this and was informed that the applicant is requesting two variances: one for the lot size as there is a one acre requirement and one for the setbacks. Mr. Dugan explained that the applicant is only requesting a variance from Section 4130, Appendix B for the front yard setback and nothing else. Mr. Bruce read aloud Chapter 40A, Section 10 and noted that “a variance cannot be granted unless permitting authority specifically finds that all conditions have been met” and noted to him this means that this home cannot be allowed to be built and affect the value of his home. Mr. Bruce feels that SK-1 is not an option due to the flooding and other issues that would arise. Mr. Cuoco explained that if all conditions had to be met there would be no need for the ZBA. Mr. Bruce added that this lot does not currently have a habitable home and no one has lived there for years. The only hardship will be to the abutters whose property values will be affected and he does not feel this is a buildable lot. Mr. Bruce noted that he does not know who owns this property currently. Mr. Dugan noted that the application states the owners as Lorraine Bradley, Irene Fiore, and Marie Romano in c/o Paula Barry. Mr. Bruce noted that to his knowledge all those people are deceased. Mr. Cuoco explained that it does not matter if the owners are deceased or not; heirs are entitled to the property.

Mr. Costa came forward again and asked if perk testing was done on this property. Mr. Dugan explained that this would be an issue for the Conservation Commission and noted that the minutes from the Conservation Commission meeting states there is a septic; however, the exact location is unknown as it is so old and there are no records. Mr. Cuoco explained that the property would be tied into town sewer.

Mr. Dunn noted that he feels the impact to the abutters is overwhelming and feels that SK-1 would be less of a hardship and should be taken into consideration. Mr. Dunn feels C-1 would change the neighborhood and would be a detriment.

Ms. Bartalamia discussed detriments and noted that the detriment cannot be that they do not like it or that trees are being removed, etc. and the only major detriment to the neighborhood would be the possibility for increased flooding.

Discussion took place on the lot sizes in this area. Mr. Connors came forward and explained that on the opposite side of Bridge Street there are one acre lots and on the other side of the street there are “smaller lots that have been cut out”.

Mr. Bruce came forward and noted that he feels this should be a fairly easy determination as SK-1 puts the home where it should be and further away from 95 Bridge Street.

Carol McCarthy of 50 Riverdale came forward and expressed concerns with the new home being put in the same location as they will experience significant flooding as she does currently. Ms. McCarthy explained that she has had to raise her home due to the flooding she currently experiences. Ms. McCarthy would prefer to see the home further away from the river.

Mr. Connors came forward again and noted that he has lived in his home for 27 years and asked if this was all one lot at one time and if the Costa’s lot was cut from it. Mr. Dugan explained that he not aware, but there are many lots in Tewksbury that are oddly cut or shaped.

Ms. Bartalamia noted that the lot can still be developed whether the variance is granted or not.

MOTION: Mr. Dunn made the motion to close both parts of the hearing; seconded by Ms. Bartalamia and the motion carried 3-0.

MOTION: Mr. Dunn made the motion to deny FTO Realty Trust for Lorraine Bradley (co-owner Irene Fiore & Marie Romano, c/o Paula Barry) for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw. The applicant proposes to construct a new single family residence as shown on plans filed with this Board. Said property is located at 20 Riverview Avenue, Assessor’s Map 98, Lot 21, zoned Residential; seconded by Ms. Bartalamia and the motion carried 2-1. Mr. Dugan was opposed.
DUGAN, DUNN, BARTALAMIA

NEW HEARINGS

Mary Kay Rauseo for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw. The applicant proposes to construct a 93 square foot three season porch onto the corner of the existing family suite in place of the existing deck only 10.2 feet from the side yard setback as shown on plans filed with this Board. Said property is located at **682 Chandler Street**, Assessor’s Map 45, Lot 99, zoned Residential.

Present was Mary Kay Rauseo and Robert Rauseo. Mrs. Rauseo explained that she and her husband have recently moved into the family suite of their home and their daughter has moved into the main part of the home. Now that they are out in the family suite, they have noticed that the sliding glass doors are not providing much privacy between them and their neighbor's house. Mrs. Rauseo noted that this proposal would improve the privacy issue and also allow them to add a small screened in porch on the existing deck. The sliding door would open into the screened in porch.

Ms. Bartalamia asked if the existing deck will be expanded by 4 feet. Ms. Rauseo explained they are extending the deck out a small amount to allow for a door. The corner of the house is already closer than 15 feet to the property line. Mrs. Rauseo noted that they are short by 4 feet 10 inches from the 15 feet. Mr. Rauseo noted that they have spoken with their neighbor and they have not expressed any concerns.

Mr. Dugan opened the hearing to the public and no one came forward.

MOTION: Mr. Dunn made the motion to close both parts of the hearing; seconded by Ms. Bartalamia and the motion carried 3-0.

MOTION: Mr. Dunn made the motion to approve Mary Kay Rauseo for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw. The applicant proposes to construct a 93 square foot three season porch onto the corner of the existing family suite in place of the existing deck only 10.2 feet from the side yard setback as shown on plans filed with this Board. Said property is located at 682 Chandler Street, Assessor's Map 45, Lot 99, zoned Residential; seconded by Ms. Bartalamia and the motion carried 3-0.
DUGAN, DUNN, BARTALAMIA

Jennifer Foisy and Daniel Mercuri for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed shed to be located 2 feet from East Street as shown on plans filed with this Board. Said property is located at **191 Chandler Street**, Assessor's Map 61, Lot 58, zoned Residential.

Present was Daniel Mercuri and Jennifer Foisy. Mr. Mercuri explained that they would like to construct a 12x20 shed 2 feet from the property line. Mr. Dunn asked if the shed is there now. Mr. Mercuri confirmed this and explained that was a previous shed in this location that was a safety concern. The shed company stated the structure was not constructed appropriately and had to brace the shed to remove it. The old shed has been removed and the new shed was put in. Mr. Mercuri provided the members with photographs of the previous shed from Google images from 2006 as well as the stock photo of the shed that is now in place. Mr. Mercuri explained that he had a survey done and there is really no other place for the shed due to the location of the septic. The shed is guarded by a 6 foot fence. Mr. Mercuri noted that he has an email from the neighbor which states he would prefer the shed in its current location.

Mr. Dugan noted that the Board is in receipt of correspondence from the Board of Health requesting a plot plan demonstrating the locations of the existing buildings, proposed shed, and septic system including the existing dry well locations. Mr. Mercuri explained that the Building Commissioner, Edward Johnson, informed him that he would need a certified plot plan and provided him with a list of local surveyors to choose from. As a result, Mr. Mercuri contacted James Aho of Aho Surveying. Mr. Mercuri noted that Mr. Aho is aware of the requirements of the Board of Health and will address this with them. Mr. Dugan suggested a condition be put in place that a certified plot plan be submitted to the Board of Health showing the shed is not located on the septic system. Mr. Mercuri explained that Mr. Aho has been made aware that the drywell and septic have been requested to be shown on the certified plot plan.

Mr. Dugan opened the hearing to the public and no one came forward.

MOTION: Mr. Dunn made the motion to close both parts of the hearing; seconded by Ms. Doherty and the motion carried 3-0.

MOTION: Mr. Dunn made the motion to approve Jennifer Foisy and Daniel Mercuri for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed shed to be located 2 feet from East Street as shown on plans filed with this Board. Said property is located at 191 Chandler Street, Assessor's Map 61, Lot 58, zoned Residential, a certified plot plan showing the location of the existing buildings, proposed shed, and septic system, including the existing dry well locations shall be submitted to the Building Department; seconded by Ms. Doherty and the motion carried 3-0.
DUGAN, DUNN, DOHERTY

Mullane Construction, LLC, Agent for Patricia Flueckiger for a variance under Section 4130, Appendix B and for a Special Permit under Section 3670 of the Tewksbury Zoning Bylaw to demolish the existing dwelling and construct a new single family home as shown on plans filed with this Board. Said property is located at **48 Lakeview Avenue**, Assessor's Map 93, Lot 172, zoned Residential.

Present was Steven Mullane of 50 Homestead Lane, Tewksbury, MA. Mr. Mullane explained that Ms. Flueckiger would like to sell this property. There is an existing home that will be demolished and a new home will be constructed approximately 35 feet from the road. Mr. Mullane noted that the new home meets all of the requirements with the exception of the frontage. The existing home is approximately 16 feet from the road.

Mr. Dunn asked for a drawing as to what is being proposed. Mr. Mullane provided photographs of the proposed home and noted that the new home will be narrower than the existing home by approximately 20 feet.

Mr. Dugan asked if they will be connecting to town sewer as part of the project and Mr. Mullane confirmed this. Mr. Dugan asked when the original home was constructed and Mr. Mullane explained approximately 1920's and noted that the same family has owned the home the entire time.

Mr. Dugan read Section 3670 aloud and asked if the proposed home is larger and Mr. Mullane explained the existing home is one story and the proposed home is two stories.

Mr. Dugan opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Dunn made the motion to close both parts of the hearing; seconded by Ms. Bartalamia and the motion carried 3-0.

MOTION: Mr. Dunn made the motion to approve Mullane Construction, LLC, Agent for Patricia Flueckiger for a Special Permit under Section 3670 of the Tewksbury Zoning Bylaw to demolish the existing dwelling and construct a new single family home as shown on plans filed with this Board. Said property is located at 48 Lakeview Avenue, Assessor's Map 93, Lot 172, zoned Residential; seconded by Ms. Bartalamia and the motion carried 3-0.
DUGAN, DUNN, BARTALAMIA

MOTION: Mr. Dunn made the motion to approve Mullane Construction, LLC, Agent for Patricia Flueckiger for a variance under Section 4130, Appendix B and of the Tewksbury Zoning Bylaw to demolish the existing dwelling and construct a new single family home as shown on plans filed with this Board. Said property is located at 48 Lakeview Avenue, Assessor's Map 93, Lot 172, zoned Residential; seconded by Ms. Bartalamia and the motion carried 3-0.
DUGAN, DUNN, BARTALAMIA

John Berube for Linda Gordon for a variance under Section 4130, Appendix B and a Special Permit under Section 4120 of the Tewksbury Zoning Bylaw to reconfigure lot, raze existing structure, and construct a new dwelling as shown on plans filed with this Board. Said property is located at **12 Maplewood Avenue**, Assessor's Map 94, Lot 310, zoned Commercial.

Present was John Berube of 2543 Main Street, Tewksbury, MA. Mr. Berube noted that he has provided two plots plans: one showing the existing conditions and the other showing the proposed conditions. Mr. Berube explained that he resides at 2543 Main Street and is proposing to take some square footage from parcel A and add it to the Main Street lot; which will now make Lot 1 more nonconforming and require a special permit. Mr. Berube explained that step 2 would then be able to demolish the existing structure and reconstruct a new home requiring a variance for area and frontage as it would not be a one acre lot. The new home conforms to all setbacks: rear, side and front, and would conform well to the neighborhood. Mr. Berube feels the land along Route 38 would be more beneficial as a commercial use in the future and noted that he would have to take appropriate avenues with the town to build on the lot, etc. A special permit would be needed from the Planning Board in order to build.

Mr. Dugan asked who owns Lot 1 and Mr. Berube explained Linda Gordon owns Lot 1 and he leases the property from Ms. Gordon. Mr. Berube is also currently occupying approximately half of Lot A. Mr. Berube explained that this is essentially a land swap and will not change the density of the land.

Mr. Berube explained that he came up with this idea when he recently saw the ads in The Lowell Sun regarding Tewksbury rejuvenating Route 38 and using it for commercial purposes along Main Street. Mr. Berube was in the process of purchasing the property anyway and will now preserve the Main Street portion for future commercial use.

Mr. Dugan noted that the applicant is seeking a variance for front yard setbacks, a variance for being less than one acre, a variance for 150 feet of frontage, and a special permit for change of lot. Mr. Berube explained that he has not received the letter from the Building Commissioner, but he does not believe he needs a variance for the front setback. Discussion took place on the zoning in this area. Mr. Dugan asked what Lot 1 is zoned at and Mr. Berube believes it to be zoned commercial. Mr. Dunn asked what the frontage is for Lot 1 and Mr. Berube noted 100 feet. Mr. Dugan explained that a variance is required for the front setback as the requirement is 40 feet in commercial and there is 30 feet. Mr. Berube explained that this is a residential use in a commercial zone and is considered residential based on the use. Mr. Dugan noted that the legal notice states the area is commercial and explained that “use” is different than “zoning”. Mr. Berube explained that he would be willing to eliminate the deck or put it to the side of the home to meet the 40 foot front setback as required in a commercial zone should this be a concern.

Ms. Doherty asked if the applicant gains any special regulations that they would not otherwise have by combining the lots. Mr. Berube explained that he does not believe so and explained that he would have to go to the Planning Board and Board of Appeals for anything that is proposed as it is a nonconforming lot.

Ms. Bartalamia noted that Parcel A is part of Lot 1 and because of that they are changing the shape of the lot and want Parcel A to combine with 2543 Main Street. As a result, they will be receiving approximately 8,000 square feet of additional land and the current dwelling to be demolished will be losing the 8,000 square feet. Mr. Berube confirmed this. Ms. Bartalamia discussed Section 4120 and expressed concerns with changing the shape of the lot by removing so much square footage. Mr. Dugan explained that they are not creating a new lot; they are just taking land from one lot and putting to another.

Discussion took place on the transfer increasing the nonconformity of the lot and whether this is allowable and whether it is certain that 2543 Main Street is zoned residential.

Mr. Dugan questioned whether the Board can make the decision as to whether the lot can be divided in this manner or not. Mr. Dunn feels the Board can allow the applicant to change the lot by special permit; however, they are really changing two lots: Lot 1 and 2543 Main Street. Mr. Dunn questioned whether this would now require two special permits and then the applicant could come back for the variances and go to the Planning Board. Mr. Dugan noted that the Planning Board would not issue a special permit until the variance was granted. Mr. Dugan questioned whether Section 4120 allows for the lot to be changed. Mr. Dunn explained that in order to fall under Section 4120, you need to be permitted to change the two lots. Mr. Berube requested the Board grant approval on 12 Maplewood contingent upon him coming back to change 2543 Main Street. Mr. Dugan suggest continuing this matter and having town counsel review it as he does not feel comfortable granting a special permit to divide a lot. Mr. Berube agreed and noted that this will also allow for review on the zoning and setback requirements and explained that he will also advertise for 2543 Main Street.

Mr. Dugan opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Dunn made the motion to continue John Berube for Linda Gordon for a variance under Section 4130, Appendix B and a Special Permit under Section 4120 of the Tewksbury Zoning Bylaw to reconfigure lot, raze existing structure, and construct a new dwelling as shown on plans filed with this Board. Said property is located at 12 Maplewood Avenue, Assessor's Map 94, Lot 310, zoned Commercial to February 26, 2015 at 6:30 p.m., the Board seeks the advice of Town Counsel; seconded by Ms. Doherty and the motion carried 3-0.
DUGAN, DUNN, DOHERTY

Old Business

There was no old business.

New Business

There was no new business.

Adjournment

MOTION: Mr. Dunn made the motion to adjourn; seconded by Ms. Doherty and the motion carried 4-0.

Approved: 2/26/15

CONTINUED NEW HEARING

- 6:30 P.M.** **FTO Realty Trust for Lorraine Bradley (co-owner Irene Fiore & Marie Romano, c/o Paula Barry)** for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw. The applicant proposes to construct a new single family residence as shown on plans filed with this Board. Said property is located at **20 Riverview Avenue**, Assessor's Map 98, Lot 21, zoned Residential.

NEW HEARINGS

- 6:30 P.M.** **Mary Kay Rauseo** for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw. The applicant proposes to construct a 93 square foot three season porch onto the corner of the existing family suite in place of the existing deck only 10.2 feet from the side yard setback as shown on plans filed with this Board. Said property is located at **682 Chandler Street**, Assessor's Map 45, Lot 99, zoned Residential.
- *Application packet dated 12/30/14.*
- 6:30 P.M.** **Jennifer Foisy and Daniel Mercuri** for a variance from Section 4130, Appendix B of the Tewksbury Zoning Bylaw for a proposed shed to be located 2 feet from East Street as shown on plans filed with this Board. Said property is located at **191 Chandler Street**, Assessor's Map 61, Lot 58, zoned Residential.
- *Application packet dated 1/6/15.*
 - *Memo 12/30/14 fr Building Commissioner.*
 - *Memo 1/28/15 fr BOH.*
- 6:30 P.M.** Mullane Construction LLC Agent for **Patricia Flueckiger** for a variance under Section 4130, Appendix B and for a Special Permit under Section 3670 of the Tewksbury Zoning Bylaw to demolish the existing dwelling and construct a new single family home as shown on plans filed with this Board. Said property is located at **48 Lakeview Avenue**, Assessor's Map 93, Lot 172, zoned Residential.
- *Application packet dated 1/8/15.*
 - *Memo 1/12/15 fr Building Commissioner.*
 - *Memo 1/28/15 fr BOH.*
- 6:30 P.M.** John Berube for **Linda Gordon** for a variance under Section 4130, Appendix B and a Special Permit under Section 4120 of the Tewksbury Zoning Bylaw to reconfigure lot, raze existing structure and construct a new dwelling as shown on plans filed with this Board. Said property is located at **12 Maplewood Avenue**, Assessor's Map 94, Lot 310, zoned Commercial.
- *Application packet dated 1/9/15.*